

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2000

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-183
) (Enforcement - UST)
DELNO E. SMITH, individually and)
d/b/a SMITTY'S FRIENDLY SERVICE,)
)
Respondent.)

ORDER OF THE BOARD (by E.Z. Kezelis):

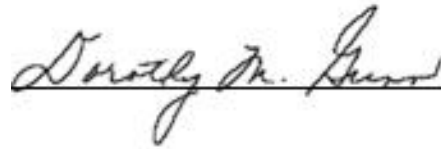
A complaint in the above-captioned matter was filed on May 5, 2000. The complaint alleges that the respondent violated specified provisions of the Gasoline Storage Act (430 ILCS 15/1 *et seq.* (1998)), and regulations adopted by the Office of the State Fire Marshal (OSFM) thereunder. The complaint seeks the imposition of penalties pursuant to Section 7(a)(5) of the Gasoline Storage Act (430 ILCS 15/7(a)(5) (1998)).

The Board has previously held that, under Illinois law, it does not have jurisdiction to hear cases arising under the Gasoline Storage Act or to find violations of the OSFM regulations promulgated thereunder. Union Oil Company of California d/b/a UNOCAL v. Barge-Way Oil Company, Inc. (January 7, 1999), PCB 98-169; Material Service Co. v. J.W. Peters and Sons (April 2, 1998), PCB 98-97. Even though UNOCAL and Material Service were citizen enforcement actions, their precedent is appropriate here. Because the only violations alleged in the complaint arise under the Gasoline Storage Act and the OSFM regulations promulgated thereunder, the Board finds that this complaint fails to state a claim upon which relief can be granted by the Board. Accordingly, the complaint is dismissed and this docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of May 2000 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board